

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
 )  
v. ) CRIMINAL ACTION NO. 05-30002-MAP  
 )  
FRANK DEPERGOLA and )  
ARMANDO BOTTA, )  
Defendants )

MOTION TO DISMISS INDICTMENTS

RELIEF SOUGHT

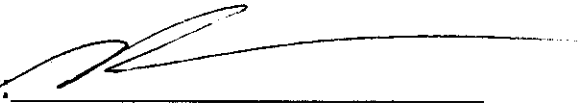
Now comes the defendant, Frank Depergola, and moves this Honorable Court, pursuant to 12(b)(2) of the Federal Rules of Criminal Procedure to dismiss Counts One and Two of the Indictments pending against him in that attempt to allege a violation of 18 U.S.C. § 894, 18 USC § 894(a), and 18 USC § 2.

GROUND FOR RELIEF

1. The grounds for this motion, as more fully set forth in the Defendant's Memorandum of Law, are that Counts One and Two fail to state an offense because there is no specificity to inform the defendant of the facts alleged in the Indictments.
2. The Indictments fail to state any specificity regarding an extension of credit, to allege any indebtedness, and fail to substantiate any facts supporting the allegations that the defendant, Frank Depergola, extended credit.
3. There is a complete absence of any showing of an act, time or place by which the defendant, Frank Depergola, joined in the alleged conspiracy, or furthered said alleged conspiracy.
4. There is no allegation within the Indictments, or evidence that the defendant, Frank Depergola, was involved in any act of violence or any other criminal means which may result from delay or failure to make repayment of any alleged debt.

The Defendant,

Date: 9/9/05

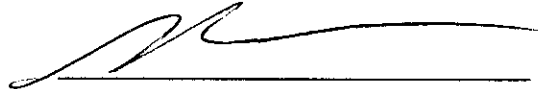
By: 

Michael L. Foy, Esquire  
935 Main Street, Ste 203  
Springfield, MA 01103  
(413) 781-1106  
BBO#176920

CERTIFICATE OF SERVICE

I, Michael L. Foy, do hereby certify that I have on this date served a copy of the foregoing document to Assistant United States Attorney, Ariane D. Vuono, in hand of same to her at the United States District Court, 1550 Main Street, Springfield, MA 01103 and Attorney Lori H. Levinson, Cain, Hibbard, Myers & Cook, by mailing same, postage prepaid to 66 West St., Pittsfield, MA 01201.

Date: 9/9/05



Michael L. Foy, Esquire

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL ACTION NO. 05-30002-MAP
	)	
FRANK DEPERGOLA and	)	
ARMANDO BOTTA,	)	
Defendants	)	

AFFIDAVIT OF COUNSEL

I, Michael L. Foy, being duly sworn, say and depose as follows:

1. I am an attorney in good standing licensed to practice law in the United States District Court located in Springfield, Massachusetts.
2. I am counsel of record for The Defendant, Frank Depergola.
3. The attached Motion to Dismiss Indictments is based on this document, the Memorandum of Law that will be submitted to the Court, the papers and records on file in this action and on whatever evidence and argument is presented at the hearing on this motion.

Sworn and subscribed to under the pains and penalties of perjury this 8<sup>th</sup> Day of September, 2005.

  
Michael L. Foy, Esq.